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Department wins appeal; insurance license denied to Henry Vance, tied to 1982 murder

FRANKFORT, Ky. — Insurance Commissioner Janie A. Miller issued an order today denying the agent application of convicted felon Henry Sheldon Vance Jr. of Lexington.

Vance appealed both the 1999 revocation of his solicitor's license by the Kentucky Department of Insurance and the subsequent denial in 2000 of his application for an agent's license. Hearing officer Thomas J. Hellman with the Attorney General's Office reviewed the evidence and issued an order in July recommending that the department deny Vance's application. Commissioner Miller had 90 days to act on the hearing officer's recommended order.

Vance previously held a solicitor's license that allowed him to solicit business for an insurance agent despite his conviction as an accessory to the 1982 murder of Eugene Berry, a Florida state prosecutor. On the day before his sentencing in 1987, Vance's application for a license was filed with and approved by the department. While Vance was in prison, his license was renewed each biennium by his sponsoring insurance agency. News reports said Vance was released from prison in 1997 after serving nine years.

In 1999 the Department of Insurance issued a "statement of charges" that Vance's license be revoked because of his 1987 conviction. He appealed this action but the issue became moot when solicitor's licenses were abolished due to a change in state law. Vance applied for an agent license and was denied. He filed a second appeal and the two cases were consolidated by the hearing officer.

The hearing officer's findings include the following:

- Vance asserted he was subject to unfair treatment since the state agency took so long to revoke his solicitor's license. The hearing officer found that DOI did not follow up on the notation in Vance's 1987 application that said he had been convicted of a crime and his case was on appeal. The agency *"failed to monitor the appeal of his criminal convictions in order to take appropriate action..."* However:
 1. That failure was *"merely administrative error rather than inconsistent conduct by the Department..."*
 2. The DOI attorney initialing the application is not a *"course of conduct"...*that *'lulled' Vance into believing that he was not subject to having his license revoked or a later application denied..."*

Page 2/ Vance

3. Vance benefited from *"the Department's failure to act more promptly to revoke his license"* rather than having *"suffered a 'substantial injury'."*
- Vance asserted that then-Commissioner George Nichols III *"showed bias toward Vance in the public statements he made regarding instituting the action to revoke Vance's solicitor's license"* and Nichols should be removed from issuing the final order. The hearing officer said:
 1. He (the hearing officer) has no authority to recuse the commissioner and
 2. The issue is moot because Nichols is now the former commissioner.
- Regarding his agent license application, Vance asserted that since DOI had previously licensed felons, the agency was violating the Kentucky Constitution by arbitrarily denying his application. The hearing officer found that felons have been licensed by DOI but they *"had not committed crimes as heinous as Vance's, and had not been sentenced to the same or similar term of incarceration..."*
- Vance maintained that by denying his agent application because of the 1987 conviction DOI had violated the five-year statute of limitations. The hearing officer found that the statute of limitations in this instance didn't begin to "run" until Vance filed an agent application in 2000.

The hearing officer did find that when DOI notified Vance of grounds for disqualification, it failed to notify him of the earliest date on which he could reapply for an agent's license or that evidence of rehabilitation could be considered upon reapplication. However, the hearing officer wrote: *"Because the Department did not inform him of the earliest date he may reapply for a license, presumably there is no minimum period before reapplication, and he may reapply at anytime. In addition, Vance acknowledges in his pleading that evidence of rehabilitation may be considered upon reapplication. Thus, Vance has knowledge of his rights...and has not suffered any prejudice by the Department's failure to list all information required ..."*